

WELDED STAINLESS STEEL PIPES AND TUBES FROM SWEDEN

Views on Remand in
Investigation No. 731-TA-354
(Final) (Remand)



USITC PUBLICATION 2304

AUGUST 1990

United States International Trade Commission
Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Investigation No. 731-TA-354 (Final)

STAINLESS STEEL PIPES AND TUBES FROM SWEDEN

Remand Determination.¹

On the basis of the record developed in this investigation, and in light of the remand to the Commission by the U.S. Court of International Trade in Trent Tube Division et al. v. United States, Consolidated Ct. No. 87-12-01189, Slip Op. 90-58 (June 20, 1990) and Slip Op. 90-66 (July 6, 1990), the Commission² determines on remand that, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), an industry in the United States is materially injured by reason of imports of welded stainless steel pipes and tubes from Sweden, that have been found by the Department of Commerce to be sold in the United States at less than fair value.

¹ The Commission's original negative final determination concerning welded stainless steel pipes and tubes from Sweden is set forth in Stainless Steel Pipes and Tubes from Sweden, Inv. No. 731-TA-354 (Final), USITC Pub. 2033 (Nov. 1987). Investigation No. 731-TA-354 also involved seamless stainless steel pipes and tubes; the Commission's final affirmative determination as to seamless pipes and tubes was sustained by the Court of International Trade and by the Court of Appeals for the Federal Circuit. Sandvik AB et al. v. United States, 13 CIT ___, 721 F. Supp. 1322 (1989), aff'd without opinion by Federal Circuit.

² Commissioner Lodwick, who reached an affirmative determination in the original investigation, readopts his original views in their entirety. The views of Commissioner Newquist, who did not participate in the original investigation, are set forth in his attached views. See Views of Commissioner Don E. Newquist on Remand.

Acting Chairman Brunsdale and Commissioner Rohr, whose negative determinations in the original investigation were sustained by the Court, make negative determinations on remand and readopt their respective views in their entirety.

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Views of Commissioner Don E. Newquist on Remand

The Commission's 1987 determination in Stainless Steel Pipes and Tubes from Sweden¹ is before the Commission again, pursuant to a remand from the Court of International Trade in Trent Tube Division, et al. v. United States, ___ C.I.T. ___ (Court No. 87-12-01189) (June 20, 1990) (Slip Op. 90-58). I construe the remand order by Judge Gregory Carman, as clarified in the Court's Slip Opinion dated July 6, 1990,² to require a response by the Commission as presently constituted, not just responses by the individual Commissioners participating in the original determination.³ Accordingly, I hereby submit to the Court my views on whether the record before the Commission in its original investigation demonstrated that a domestic industry was materially injured, or was threatened with material injury, by reason of LTFV imports of welded stainless steel pipes and tubes from Sweden.⁴

¹ Inv. No. 731-TA-354 (Final), USITC Pub. No. 2033 (Nov. 1987).

² Slip Op. 90-66.

³ See id. at 7-8.

⁴ The Court's Opinion of June 20, 1990, contained the instruction to "explain[] [Chairman Liebeler's] analysis[.]" Slip Op. 90-58 at 12. Because that instruction was deleted by the Court in its July 6, 1990 revision of the remand order, and

Like product/domestic industry and related parties

I concur in the Commission's original like product and domestic industry determinations. Thus, based on differences in the physical characteristics, end uses, and prices of welded versus seamless stainless steel pipes and tubes, I agree with my colleagues that these products constitute different like products. Also, I join the Commission's definition of the welded pipe and tube industry, including its discussion and determination regarding the exclusion of Sandvik Steel Co. from the domestic industry under the related parties provision.⁵

Condition of the domestic industry

Over the period of investigation, the U.S. market for welded stainless steel pipes and tubes remained sluggish. Apparent U.S. consumption increased from 76,377 short tons in 1984 to 78,878 short tons in 1985, then declined 2.3 percent to 77,042 short tons in 1986. In interim (January-June) 1987, consumption declined slightly (by 2.2 percent) in comparison with interim 1986. Consumption by value followed similar trends, increasing from \$265.9 million in 1984 to \$275.9 million in 1985, then declining to \$268.2 million in 1986. In interim 1987, the value

because my analysis differs from the type of analysis set forth in Commissioner Liebeler's views, I have not provided any evaluation or explanation of Commissioner Liebeler's views. See *SCM Corp. v. U.S.*, 519 F. Supp. 911, 915-916 (CIT 1981).

⁵ See USITC Pub. No. 2033 at 8. Further, for the reasons set forth in the statement of the Commission's views, I agree that in this investigation, as in past investigations, welded pipe and tube containing between 10.1 and 11.5 percent chromium (primarily "grade 409" pipe and tube) should be excluded from the like product definition for welded pipe and tube. *Id.* at 6-7.

of consumption declined 6.4% in comparison with interim 1986.⁶ Trends in domestic production were similar to those for consumption, showing an increase from 1984 to 1985, a decline in 1986 to a level somewhat higher than that for 1984, and a further decline (by 8 percent) in interim 1987.⁷ Production capacity increased by 5.4 percent from 1984 to 1986 and then declined by 8.8 percent in interim 1987 compared with interim 1986. Capacity utilization increased from 60 percent in 1984 to 60.7 percent in 1985, then dropped to 58.1 percent in 1986. Capacity utilization was 65.7 percent in January-June 1987 compared with 65.1 percent in interim 1986.⁸

U.S. producers' domestic shipments increased from 64,091 short tons in 1984 to 66,691 short tons in 1985. In 1986, however, shipments declined by 6.3 percent, to 62,500 short tons. By value, shipments increased from \$234.6 million in 1984 to \$242.7 million in 1985, but then declined (by 5.8 percent) to \$228.7 million in 1986. In interim 1987, shipments increased by 0.6 percent in volume, yet fell 5.8 percent in value, compared with interim 1986.⁹

⁶ Staff Report at A-31.

⁷ Domestic production figures over the period of investigation were 1984 - 64,713 short tons; 1985 - 67,868 short tons; 1986 - 66,021 short tons; interim (Jan.-June) 1986 - 37,394 short tons; interim 1987 - 34,389 short tons.

⁸ Staff Report at A-35.

⁹ Staff Report at A-36. These data on the quantity and value of domestic shipments in the interim periods suggest that the unit value of domestic shipments declined. It is not entirely clear, however, to what extent this was due to declining prices

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In each full year under investigation, the ratio of inventories to shipments exceeded 20 percent. As of June 30, 1987, inventories (calculated on the basis of annualized shipments) totalled 19.3 percent of shipments, down from 21.4 percent on June 30, 1986. ¹⁰

Although employment by producers of welded pipes and tubes remained fairly constant from 1984 through 1986, both total wages and total compensation declined throughout the period of investigation. Although hourly wage rates increased in 1986 as compared with 1985, they still were below the level recorded for 1984, and hourly wages declined further in interim 1987 compared with the same period in 1986. Total hours worked also declined in both 1986 and interim 1987. ¹¹ Employment declined in 1986 and interim 1987, with three firms (which accounted collectively for some [] of reported domestic shipments of welded pipes and tubes in 1986) reporting permanent layoffs. ¹² One of these firms -- [

versus a change in the mix of products being sold.

¹⁰ Staff Report at A-40.

¹¹ The decline in hours worked in 1987 was due in part to labor strikes. Staff Report at A-43.

¹² Report at A-19, A-41. Strikes and temporary layoffs also were reported by some producers. These strikes and temporary layoffs may not have had a critical effect on domestic production. Petitioner contends, however, that strikes at Trent Tube Division, ARMCO Inc., and Bristol Metals were prompted by management's need for wage concessions in response to generally depressed industry conditions. See Petitioner's Post-Hearing Brief, Appendix 4.

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[]¹³

Income-and-loss data on welded pipe and tube operations were obtained from 11 firms that accounted for roughly 85 percent of reported domestic shipments in 1986. Net sales by these firms increased from \$207.7 million in 1984 to \$213.3 million during 1985, or by 2.7 percent, then declined by 4 percent in 1986 to \$204.8 million. Net sales showed a further decline, by 2.8 percent, in interim 1987 compared with interim 1986. While the industry's operating income levels (both in absolute terms and as a percentage of net sales) improved during 1985 and again in 1986, annual operating losses were reported in each year under investigation, with seven of 11 firms showing operating losses in 1986. I note that in interim 1987, the number of firms reporting operating losses doubled in comparison with interim 1986.¹⁴

Based on the foregoing trends in production, domestic shipments, employment and financial performance, I conclude that the record of this investigation clearly depicts an industry that is suffering material injury and is vulnerable to the impact of LTFV imports.

¹³ Staff Report at A-19-A-20.

¹⁴ Staff Report at A-52. As noted by the Commission in its 1987 determination, the financial performance of the integrated producers differed from that of the non-integrated producers.

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Staff Report at A-54.

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Causation

In analyzing whether imports of welded stainless steel pipes and tubes from Sweden have been a cause of material injury to the domestic industry, I have considered the volume of the subject imports, their effect upon prices in the United States for the like product, and the impact of the imports upon domestic producers.¹⁵

The volume of LTFV imports from Sweden rose steadily from 1984 through 1986, increasing from 1,844 short tons in 1984 to 2,191 in 1985 and 2,822 short tons in 1986.¹⁶ As a share of the domestic market, subject imports increased (by volume) from 2.4 percent in 1984, to 2.8 percent in 1985, to 3.7 percent in 1986. Measured by value, market penetration by the subject imports rose from 2.0 percent in 1984 and 1985, to 2.7 percent in 1986.¹⁷ These data, however, understate the market presence of the subject imports in 1986, when the importer, Avesta Stainless, Inc., drew down substantially on accumulated inventories, which were reduced from [] short tons in 1985 to [] short tons in

¹⁵ See 19 U.S.C. §1677(B) (1982).

¹⁶ Staff Report at A-74.

¹⁷ Staff Report at A-76. Import penetration levels, measured by quantity and value, fell in interim 1987 compared with interim 1986. According to Avesta Stainless, Inc., this decline reflected its decision to scale down its presence in the U.S. market and shift supplies into the European market. See Staff Report at A-99. I note, however, that this decline may also reflect a response to the filing of petitioner's antidumping petition in October 1986. I therefore have given less weight to this decline in imports during the first two quarters of 1987. See generally, Rhone Poulenc S.A. v. United States, 592 F. Supp. 1318, 1324 (1984).

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1986.¹⁸

As the volume, value and market penetration of the subject imports increased over the period 1984 through 1986, domestic producers' market share declined, from 83.9 to 81.1 percent by volume, and from 88.2 to 85.3 percent by value.¹⁹ Also, domestic producers' inventories increased in 1986.²⁰ I conclude that while (even in 1986) the volumes of LTFV imports from Sweden were fairly modest, they nonetheless were significant in light of the performance of the domestic industry during this same period.²¹ As noted in the legislative history of Title VII, depending upon the industry in question, "an apparently small volume of imports may have a significant impact on the market."²²

Prices for domestically produced welded stainless steel pipes and tubes generally fluctuated over the period of

¹⁸ Staff Report at A-65. In interim 1987, inventories [] Id.

¹⁹ Staff Report at A-76.

²⁰ Staff Report at A-65. Excluding 1986 inventories reported by one producer who could not provide inventory data for 1985 and 1984, year end inventories held by firms responding to Commission questionnaires increased from [] Staff Report at A-40.

²¹ In 1986, as the level of imports continued to rise (and import sales from inventory increased), domestic consumption, domestic production and domestic shipments declined.

²² H.R. Rep. 317, 96th Cong., 1st Sess. 46 (1979). This often is the case in industries producing fungible, price-sensitive articles, such as steel products, or where demand is relatively price inelastic. See *USX Corp. v. United States*, 655 F. Supp. 487, 490 (CIT 1987).

investigation.²³ There was, however, consistent price undercutting by the subject imports over most of the period of investigation. In 28 of 33 quarterly price comparisons of imported and domestic grades of A-312 pipe,²⁴ the subject imports undersold the domestic product, in most instances by margins ranging from 10 to 38 percent.²⁵

An important issue bearing on causation in this investigation concerns the extent to which the subject imports and domestically produced welded products compete on the basis of price. Respondent Avesta contends, for example, that its price undercutting did not have an injurious impact on the domestic industry, because a purchaser's choice of suppliers is largely dictated by various non-price factors.²⁶ Thus, respondent argues that the longer lead times involved in obtaining supplies of imports from Sweden minimize the competitive advantage that might otherwise result from underselling.²⁷ The range of lead times

²³ Staff Report at A-87-A-88, A-137-A-138.

²⁴ The sale of A-312 pipe constitutes a major area of competition in the U.S. market between domestic and Swedish producers of welded stainless steel pipes and tubes. In 1986, A-312 pipe accounted for almost all of Avesta AB's welded sales, and more than one-half of the sales of domestic firms accounting for some 80 percent of the industry's total domestic sales. Staff Report at A-83.

²⁵ Staff Report at A-91-A-92. See also A-137-A-138.

²⁶ See Pre-Hearing Brief of Avesta at 52.

²⁷ Several domestic purchasers confirmed that longer lead times are a significant factor in their decision whether to purchase Swedish stainless steel pipes and tubes, as longer lead times require larger purchases per order and therefore lead to higher inventory carrying costs. Staff Report at A-100. However,

associated with procuring subject imports from Sweden is somewhat more lengthy than that involved in obtaining the domestic product; however, they are comparable. Moreover, this difference in lead times narrowed toward the end of the period of investigation when constraints on the supply of raw materials increased the lead time required in purchasing from U.S. producers.²⁸

Another factor that limits the substitutability of imported for domestic product is purchasers' preference for American made products, which may reflect end users' preferences, company policy (e.g., loyalty to domestic suppliers, desire to diversify supply), or -- in the case of various types of government contracts -- regulatory requirements. According to Avesta, this "buy American" market is estimated to be between 10 to 15 percent of total domestic consumption of stainless steel pipes and tubes. U.S. producers claim this market is less than 2 percent. Responses to Commission questionnaires suggest that between 15 and 25 percent of the U.S. market may be influenced to some extent by such preferences. I note, however, that only 1 to 4 percent of reported purchases were subject to government contracts mandating the purchase of domestically produced

distributors -- who accounted for the bulk of both U.S. producers' and importers' domestic shipments -- reported that they are able to adjust their inventory planning to minimize these additional costs. See EC-K-111 at 2.

²⁸ Also, until 1986, import sales were made from Avesta's U.S. warehouse distribution facility. On these sales, the lead time was two weeks or less. Staff Report at A-99 n. 1.

products.²⁹ Further, the 53 percent increase in imports of welded stainless steel pipes and tubes from Sweden in the period 1984 to 1986 reflects some considerable success in overcoming whatever impediment to import sales results from buy-American purchasing preferences.

Lastly, the Commission investigated two additional non-price factors -- product quality and reliability of supply -- that might reduce the commercial interchangeability of imports and the domestic product, and thereby temper the impact of price undercutting by imports. Most of the available information indicates, however, that there were no significant differences in either the quality, or the reliability of supply, of the imported and the domestic product.³⁰

Based on the foregoing evidence of record, I conclude that non-price factors such as supply lead times, buy-American preferences, and alleged differences in product quality and/or reliability of supply do not reduce substantially the importance of head to head price competition between the subject imports and domestically produced welded stainless steel pipes and tubes. Indeed, purchasers' questionnaires demonstrate that price is a major factor influencing a purchaser's choice of suppliers.³¹ In addition, information collected in this investigation and in the preliminary and final subsidy investigations (Inv. No. 701-TA-

²⁹ Staff Report at A-102.

³⁰ Staff Report at A-98, A-109, A-111, A-113, A-144.

³¹ See Purchaser Questionnaire Responses at 6, 10.

281) confirms petitioner's allegation that the subject imports have displaced sales by the domestic industry on the basis of price.³²

Since 1985, the domestic market for welded stainless steel pipes and tubes has contracted. Although welded producers have made improvements in their financial (operating income) performance during this period, their sales and market share have declined, while the volume, value and market share of LTFV imports, imports that are being sold consistently below domestic producers' prices, have increased. While price trends are mixed, it is apparent from the statements of purchasers and distributors that domestic producers have not only lost sales to the subject imports, but often have had to lower their prices (thereby losing revenues) in order to compete.³³ In my view, this evidence shows that the subject imports have hurt U.S. producers' sales and prices, thereby contributing in a significant way to the injured condition of the domestic industry.

Accordingly, I conclude that the evidence in the record before the Commission in Stainless Steel Pipes and Tubes from Sweden, Inv. No. 731-TA-354 (Final) (1987), confirms petitioner's allegation that the domestic industry producing welded stainless steel pipes and tubes was then materially injured by LTFV imports from Sweden.

³² See Staff Report at A-110, A-113, A-114.

³³ Staff Report at A-110, A-112-A-113, A-116, A-144-A-147.

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